

**Written Testimony on HB 2530
to
House Judiciary Committee**

**by Dave Starkey
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Good afternoon, Chairman Kinzer and members of the committee. I am Dave Starkey, chief counsel with the Kansas Department of Agriculture. I am here to provide neutral written testimony on House Bill 2530.

The main provisions of the bill are changes to the procedure for the adoption of rules and regulations. The proposed changes seem reasonable. They could provide more efficiencies and potential cost savings. However, the bill contains other provisions which could be problematic. New Section 1 in HB 2530 creates requirements for a new type of document called “guidance document.” There are two issues which should be considered.

First, if enacted New Section 1 requires state agencies to determine what current documents are “guidance documents.” All guidance documents must then be collected, indexed and published on the department’s website. Those documents must then be continually updated and maintained to comply with the new law. Extensive staff time for review, development and implementation will be required. If this is not done, then an agency could be penalized in an administrative proceeding. During ordinary times, these tasks could be performed. These are not ordinary times. State agencies, in some cases, are struggling to perform other statutory duties and responsibilities. This may not be the time for this new mandate.

Second, New Section 1(b) says a person may contest the legality of positions taken by a department in the guidance document in an administrative proceeding. Under existing law, a person can always challenge the legality of agency action. This new statutory statement may be unnecessary. Moreover, New Section 1(b) says a person may challenge “the wisdom of positions taken in the document.” In some cases, this may be counter to existing law. The Legislature requires state agencies to administer and enforce laws. For example, the chief engineer of the division of water resources has the statutory duty to administer the state’s water resources. The appellate court has said deference is to be given to the chief engineer because of special training and expertise in administering applicable statutes. If enacted, the focus of the administrative hearing may become a debate over the guidance document rather than whether or not a statute, rule, or regulation has been violated.

I will stand for questions at the appropriate time.